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October 21, 2005

Via Electronic Filing (Confirmation to Judge via Fed Ex)

Judge Rya W. Zobel
 U.S. District Court of Massachusetts
 John Joseph Moakley Courthouse
 1 Courthouse Way
 Boston, MA 02210

Re: Docket No. 1:05-cv-10367-RWZ
 Miller et al. v. Treado et al.
Our ref.. 34250-60L

Dear Judge Zobel:

For at least the reasons below, counsel for Plaintiffs in the above-identified litigation respectfully request that the Court consider hearing oral arguments concerning the pending Motion to Enjoin Defendants' Reissue Proceeding at the pretrial conference scheduled for this Tuesday, October 25, 2005 at 2:30 PM:

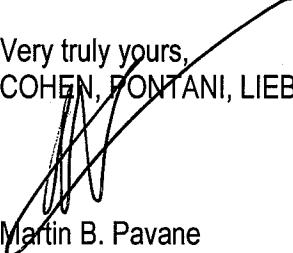
- (1) After Plaintiffs filed the Complaint [Docket #1] in this litigation on February 24, 2005, Defendants filed a reissue application for the patent-in-suit on April 11, 2005, and thereafter moved the Court to stay the present litigation until after the reissue proceeding was completed. Your honor denied Defendants' motion to stay these proceedings.
- (2) On June 23, 2005, Plaintiffs filed a Motion to Enjoin Defendants' Reissue Proceeding [Docket #11] primarily on the basis that, until Plaintiffs' rights in the claims of the patent-in-suit have been determined, it would be unfair and prejudicial to allow the Defendants to unilaterally alter those claims.
- (3) Both parties have requested oral argument on this motion: Plaintiffs on July 25, 2005 [Docket #17]; Defendants on August 11, 2005 [Docket #23].
- (4) As of today, the U.S. Patent & Trademark Office (PTO) has not begun substantive examination of Defendants' reissue application. Application data report from the PTO attached (see "Docketed New Case - Ready for Examination" under status). It should be noted that within 24 hours after the PTO assigned an Examiner to the reissue application, Defendant Patrick Treado and Defendants' counsel requested an interview with that Examiner, and then traveled in person to Virginia on the same day in order to discuss the reissue application in what appears to be an attempt to encourage the Examiner to start the examination process as quickly as possible. Even so, the only communication that the PTO has issued is a Notice of Non-Compliance on October 4, 2005, which indicated that the initial reissue application did not comply with a formal requirement (the application did not contain a complete listing of claims). In short, the substantive examination of the reissue proceeding has not yet begun.



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For the above reasons, counsel for Plaintiffs respectfully suggest that the Court consider hearing oral arguments in this matter at the pretrial conference scheduled for next Tuesday, October 25, 2005 (which counsel for Plaintiffs will attend by telephone).

Very truly yours,
COHEN, PONTANI, LIEBERMAN & PAVANE


Martin B. Pavane

CC: Anthony Fitzpatrick (via ECF)
Paul D. Weller (via ECF)

Enc. Application Data report concerning the reissue proceeding printed from the PTO's website

Printer Friendly

11/103,423 Near infrared chemical imaging microscope

Application Data

Application Number:	11/103,423	Customer Number:	-
Filing or 371 (c) Date:	04-11-2005	Status:	Docketed New Case - Ready for Examination
Application Type:	Re-Issue	Status Date:	08-09-2005
Examiner Name:	LAUCHMAN, LAYLA G	Location:	ELECTRONIC
Group Art Unit:	2877	Location Date:	-
Confirmation Number:	2434	Earliest Publication No:	-
Attorney Docket Number:	5675-5008RE	Earliest Publication Date:	-
Class / Subclass:	356/326	Patent Number:	-
First Named Inventor:	Patrick Treado , Pittsburgh, PA	Issue Date of Patent:	-
Title of Invention:	Near infrared chemical imaging microscope		

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